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4 MICHAEL ANGEL ULLOA II,  
5 Plaintiff,  
6  
7 v.  
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9 SECURITAS SECURITY SERVICES  
10 USA, INC.,  
11 Defendant.

12 Case No. [23-cv-01752-DMR](#)

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**ORDER ON JOINT DISCOVERY  
LETTER**

17 Re: Dkt. No. 41

18 The parties filed a joint discovery letter in which Plaintiff Michael Angel Ulloa II moves to  
19 compel Defendant Securitas Security Services USA, Inc. to respond to discovery. [Docket No.  
20 41.] This matter is suitable for resolution without a hearing. Civ. L.R. 7-1(b). For the following  
21 reasons, the motion to compel is granted.

22 **I. BACKGROUND**

23 In this putative class action, Plaintiff sues his former employer for wage and hour  
24 violations under California law. Defendant employed Plaintiff as a “Flex Officer” from May 2022  
25 to October 2022. As a Flex Officer, Plaintiff filled in for security officers on leave, provided  
security for special events, and temporarily staffed new accounts. [Docket No. 24 (FAC) ¶ 4.]  
Plaintiff seeks to represent a class of “all current and former non-exempt employees of Defendant[  
] in the State of California at any time within the period beginning four (4) years prior to the filing  
of this action and ending at the time this action settles or the class is certified[.]” [Docket No. 24  
(FAC) ¶ 6.]

26 Plaintiff filed the complaint in state court in February 2023. Defendant filed an answer on  
27 April 7, 2023. NOR ¶¶ 3, 4, Exs. 1, 2. Defendant removed the action to this court on April 12,  
28 2023 and moved pursuant to Rule 12(b)(6) to dismiss the complaint. The court converted the

1 motion to a Rule 12(c) motion for judgment on the pleadings and granted the motion. *Ulloa v.*  
2 *Securitas Sec. Servs. USA, Inc.*, No. 23-CV-01752-DMR, 2023 WL 5538276, at \*3 (N.D. Cal.  
3 Aug. 28, 2023). In relevant part, the court dismissed Plaintiff's claims with leave to amend and  
4 dismissed his request for injunctive relief with prejudice. *Id.*

5 Plaintiff timely filed the FAC alleging claims on behalf of the putative class and seeking  
6 penalties under the Private Attorneys General Act ("PAGA"), California Labor Code section 2699,  
7 on behalf of himself and other aggrieved employees. Defendant moved to dismiss. It asked the  
8 court to take judicial notice of two collective bargaining agreements ("CBAs") between Defendant  
9 and Service Employees International Union, United Service Workers West ("SEIU-USWW"),  
10 effective from August 2017 through June 2026. According to Defendant, the CBAs govern  
11 Plaintiff's employment and contain grievance and arbitration provisions that cover Plaintiff's  
12 wage and hour claims. Defendant sought to dismiss the FAC based on Plaintiff's failure to  
13 exhaust the CBA's internal grievance procedures and preemption under the Labor Management  
14 Relations Act, 29 U.S.C. § 185. It also sought to dismiss or strike the class claims from the FAC  
15 based on the union's purported waiver of employees' rights to bring class and/or collective  
16 actions. *Ulloa v. Securitas Sec. Servs. USA, Inc.* ("Ulloa II"), No. 23-CV-01752-DMR, 2023 WL  
17 8720140, at \*2-3 (N.D. Cal. Dec. 18, 2023). As all of Defendant's arguments in favor of  
18 dismissal relied on "materials outside the complaint that Defendant ha[d] not established are  
19 judicially noticeable," the court denied the motion to dismiss. *Id.* at \*3.

20 Plaintiff now seeks to compel Defendant to respond to three interrogatories and four  
21 requests for production ("RFPs") seeking information about the putative class members and  
22 aggrieved employees.

## 23 **II. LEGAL STANDARD**

24 Federal Rule of Civil Procedure 26 provides

25 Parties may obtain discovery regarding any nonprivileged matter that  
26 is relevant to any party's claim or defense and proportional to the  
27 needs of the case, considering the importance of the issues at stake in  
the action, the amount in controversy, the parties' relative access to  
relevant information, the parties' resources, the importance of the  
discovery in resolving the issues, and whether the burden or expense  
of the proposed discovery outweighs its likely benefit.

1 Fed. R. Civ. P. 26(b)(1). “Information within this scope of discovery need not be admissible in  
2 evidence to be discoverable.” *Id.* “Relevancy, for the purposes of discovery, is defined broadly,  
3 although it is not without ultimate and necessary boundaries.” *Gonzales v. Google, Inc.*, 234  
4 F.R.D. 674, 679-80 (N.D. Cal. 2006). “While the party seeking to compel discovery has the  
5 burden of establishing that its request satisfies relevancy requirements, the party opposing  
6 discovery bears the burden of showing that discovery should not be allowed, and of clarifying,  
7 explaining, and supporting its objections with competent evidence.” *Lofton v. Verizon Wireless*  
8 (VAW) LLC, 308 F.R.D. 276, 281 (N.D. Cal. 2015) (citing *La. Pac. Corp. v. Money Mkt. I*  
9 *Institutional Inv. Dealer*, 285 F.R.D. 481, 485 (N.D. Cal. 2012)).

10 “District courts have broad discretion to control the class certification process, and whether  
11 or not discovery will be permitted lies within the sound discretion of the trial court.” *Vinole v.*  
12 *Countrywide Home Loans, Inc.*, 571 F.3d 935, 942 (9th Cir. 2009) (citations omitted).

### 13 III. DISCUSSION

#### 14 A. Interrogatory Nos. 4-6

15 Interrogatory Nos. 4-6 seek the contact information for all putative class members (Nos. 4,  
16 5) and aggrieved employees under PAGA (No. 6). Defendant objects to these interrogatories on  
17 three grounds: 1) the parties dispute the scope of the putative class; 2) “Plaintiff will be unable to  
18 satisfy the commonality requirement to certify the proposed putative class”; and 3) employees  
19 who are not covered by a CBA signed “an arbitration agreement containing a class action waiver”  
20 and are “exempt[ ]” from the putative class. Jt. Letter 3. Defendant offers to provide contact  
21 information for employees covered by the same CBAs as Plaintiff. *See id.* at 2-3. It does not  
22 assert objections based on privacy concerns or burden.

23 Each of Defendant’s objections is merits-based. They are misplaced because at this stage  
24 the key question is whether the discovery is relevant, not whether Plaintiff’s claims are  
25 meritorious. *See, e.g., Synopsys, Inc. v. Ubiquiti Networks, Inc.*, No. 17-CV-00561-WHO (LB),  
26 2018 WL 577941, at \*3 (N.D. Cal. Jan. 29, 2018) (“This is a discovery motion . . . [the plaintiff]  
27 need not prove its claims at this juncture.”). Plaintiff is entitled to reasonable pre-certification  
discovery of the putative class members’ contact information. The Supreme Court has recognized

1 the importance of permitting class counsel in Rule 23 actions to communicate with potential class  
2 members for the purpose of gathering information, even prior to class certification. *Gulf Oil Co.*  
3 *v. Bernard*, 452 U.S. 89, 102-03 (1981); *see also Vinole*, 571 F.3d at 942 (“Although a party  
4 seeking class certification is not always entitled to discovery on the class certification issue, the  
5 propriety of a class action cannot be determined in some cases without discovery.”); *Doninger v.*  
6 *Pacific Northwest Bell, Inc.*, 564 F.2d 1304, 1313 (9th Cir. 1977) (“the better and more advisable  
7 practice for a District Court to follow is to afford the litigants an opportunity to [obtain material  
8 through discovery in order to demonstrate] whether a class action was maintainable . . . especially  
9 when the information is within the sole possession of the defendant.”).

10 Accordingly, Plaintiff’s motion to compel further responses to Interrogatory Nos. 4-6 is  
11 granted. This discovery shall be produced pursuant to a protective order. The parties shall meet  
12 and confer regarding one of the Northern District’s model stipulated protective orders (available at  
13 <http://cand.uscourts.gov/model-protective-orders>). **By no later than July 12, 2024**, the parties  
14 shall submit a proposed protective order in accordance with section 16 of the court’s Standing  
15 Order.

16 **B. RFP Nos. 12-13**

17 RFP Nos. 12 and 13 “seek timekeeping and payroll records for the putative class.” Jt.  
18 Letter 3. Defendant objects to providing this information for all putative class members. It  
19 contends that Plaintiff will be unable to establish the requirements of Federal Rule of Civil  
20 Procedure 23(a) based on variances in “client facilities, locations, and businesses, some of which  
21 are unionized and some of which are not.” Jt. Letter 4. It also argues that as a union employee,  
22 Plaintiff will not be an adequate representative of the putative class and is “in direct conflict with  
23 non-union employees” who have signed class action waivers. *Id.* at 4-5. Defendant does not  
24 object based on relevance or burden.

25 As with the interrogatories, Defendant’s objections go to the merits of class certification.  
26 Additionally, Plaintiff offers to accept a 20% sampling of the documents he seeks. *Id.* at 3.  
27 Defendant responds that “a 20% sampling of all employees in California is unreasonable and  
28 excessive,” but does not offer a compromise of its own and does not articulate any burden

1 associated with producing the requested documents. *Id.* at 5. Timekeeping and payroll records for  
2 the putative class are relevant to Plaintiff's claims and may also bear on issues of commonality  
3 and predominance. As Defendant has not articulated a reasoned response to Plaintiff's proposal,  
4 the court grants Plaintiff's motion to compel as follows: Defendant must provide a 20% sampling  
5 of the requested records without prejudice to seeking additional responsive documents if a class is  
6 certified. The parties shall promptly meet and confer to devise a mutually acceptable sampling  
7 protocol. Defendant shall produce responsive documents subject to the protective order.

8 **C. RFP Nos. 14-15**

9 RFP Nos. 14 and 15 are parallel to RFP Nos. 12 and 13 in that they seek "timekeeping and  
10 pay records" for all aggrieved employees under PAGA (as opposed to putative class members).  
11 This calls for a smaller set of records because the PAGA period covers a significantly shorter time  
12 period than the putative class. *See LaCour v. Marshalls of California, LLC*, 94 Cal. App. 5th  
13 1172, 1184 (2023) ("The statute of limitations under PAGA is one year from the date of the last  
14 violation."). Defendant objects that it "does not maintain electronic timekeeping records for all  
15 non-exempt employees in California," and that "some clients do not utilize an electronic  
16 timekeeping system." Jt. Letter 5. It argues that "producing all timekeeping records is  
17 burdensome and oppressive." *Id.* It does not elaborate on these objections or provide details  
18 regarding the burden associated with producing the requested documents. Defendant does not  
19 specifically respond to Plaintiff's request for "pay records" for aggrieved employees.

20 In response, Plaintiff requests "the production of all electronic wage statements for the  
21 PAGA period." *Id.* He also states that he will accept a 20% sampling of "handwritten time  
22 records . . . for the PAGA period if Defendant stipulates that it will not argue the sampling is not  
23 representative and cannot be used to extrapolate to the entire PAGA period." *Id.* Defendant does  
24 not respond to this request.

25 As noted, as the party opposing discovery, Defendant "bears the burden of showing that  
26 discovery should not be allowed, and of clarifying, explaining, and supporting its objections with  
27 competent evidence." *Lofton*, 308 F.R.D. at 281. Defendant has failed to satisfy this burden.  
28 Accordingly, Plaintiff's motion to compel is granted with respect to the electronic wage

1 statements. Defendant shall produce responsive documents subject to the protective order.

2 As to the production of handwritten time records, the parties shall immediately meet and  
3 confer regarding Plaintiff's proposal to accept a representative sample. **By no later than July 12,**  
4 **2024**, the parties shall submit a two-page joint letter setting forth any remaining disputes regarding  
5 the production of handwritten time records for aggrieved employees.

6 **IV. CONCLUSION**

7 For the foregoing reasons, Plaintiff's motion to compel is granted. The parties shall submit  
8 a proposed protective order by July 12, 2024. Defendant shall serve supplemental interrogatory  
9 responses and responsive documents within seven days after the court enters the parties' proposed  
10 protective order. Any joint letter regarding Plaintiff's request for handwritten time records for  
11 aggrieved employees is due by July 12, 2024.

12 **IT IS SO ORDERED.**

13 Dated: June 28, 2024

